

17873 ms. Sayra



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-202077

DATE: April 22, 1981
[Authority For]

MATTER OF: Department of the Navy - Payment
of Interest Charges *by Navy]*

DIGEST:

1. GAO cannot readily conclude that Great Lakes Pilotage Act, requiring use of licensed pilots for certain vessels navigating Great Lakes, applies to U.S. Navy ships.
2. Interest may be paid by Navy Department on amounts due for pilot services rendered to Navy ships on Great Lakes, where Navy contracted for services with the understanding that its obligation for payment would be determined by body of regulations (Subpart D, 46 C.F.R. § 401.100) governing charges for pilot services, which includes regulation (46 C.F.R. § 401.427) authorizing interest charges.

The Deputy Commander for Pay, Travel and Disbursing Systems, Navy Accounting and Finance Center, Department of the Navy has requested an advance decision pursuant to 31 U.S.C. § 82d (1976), as to whether a Navy disbursing officer may properly certify a voucher to pay interest on charges for pilot services rendered to Navy ships by Upper Great Lakes Pilots, Inc.

Pilots, Inc. is an association of pilots licensed to navigate on certain areas of the Great Lakes, pursuant to the Great Lakes Pilotage Act of 1960, 46 U.S.C. §§ 216-216i (Supp. II 1978). Under purchase orders issued in 1979, Pilots, Inc. rendered pilot services to two Navy ships in August and September 1979. In April

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1980, the parties signed an addendum to one of the original purchase orders which purported to modify its terms by authorizing interest charges on billed amounts remaining unpaid for 30 days or more.

The total charge to the Navy for the pilot services was \$9,582. An additional amount of \$431.19 was later billed to the Navy by Pilots, Inc., representing interest charges on the Navy's unpaid balance for the months of October, November and December 1979. Payment of the latter amount is the subject of the Navy's inquiry.

The Great Lakes Pilotage Act was intended to regulate navigation on the Great Lakes in the interest of maritime safety. See H.R. Rep. No. 1666, 86th Cong., 2d Sess. 3, reprinted in [1960] U.S. Code Cong. & Admin. News 2481, 2483. To accomplish that goal, section 3 of the Act, 46 U.S.C. § 216a, requires registered vessels of the United States and foreign vessels to have in their service a pilot registered under the Act to navigate the Great Lakes.

While the Act does not expressly exclude Navy ships from its pilot requirements, section 3 of the Act by its terms applies only to "registered vessels of the United States." A vessel is regarded as having U.S. registry only when it receives the documentation necessary for it to engage in foreign trade. See 46 U.S.C. § 11 (1976); St. Clair v. United States, 154 U.S. 134 (1894); The Mohawk, 70 U.S. 566, 571 (1865). The statutory term thus appears to include only ships engaged in commercial activity, and by implication to exclude Navy ships. Cf. The Helori, 24 F.2d 710 (W.D. Wash. 1928). Accordingly, we cannot readily conclude that the mandatory pilot requirements of the Act do apply to Navy ships.

Nevertheless, as part of the regulation of Great Lakes pilots, section 5 of the Act, 46 U.S.C. § 216c, authorizes the Secretary of Transportation to establish "* * * rates, charges and any other conditions or terms for services performed by registered pilots * * *." Pursuant to that authority, the Secretary issued 46 C.F.R. § 401.427 (1979), which provides:

"A charge of one and a half percent (1 1/2%) per month shall be paid on the opening monthly balance on accounts remaining unpaid over thirty (30) days after the billing date."

It is well settled that payment of interest by the Government on its unpaid accounts or claims may not be made except when interest is provided for by contract or statute. E.g., United States v. Alcea Band of Tillamooks, 342 U.S. 48, 49 (1951); Smyth v. United States, 302 U.S. 329 (1937); RCA Corporation, 59 Comp. Gen. 380 (1980), 80-2 CPD 80. Because we have concluded that the Act does not apply to Navy ships, the statute, standing alone, cannot be held to authorize payment of interest in the instant case. However, it is our view that the regulation providing for interest charges, 46 C.F.R. § 401.427, must be regarded as forming part of the contract for pilot services.

Subpart D of 46 C.F.R. § 401.100, sets out charges, including late charges, incident to performing these pilot services. The rates paid by the Navy for the pilot services were not negotiated, but were determined under the schedules specified in the regulations. In addition, we understand that the contracting officer believed that the terms of the contract would be subject to the regulations. Accordingly, since the Navy ordered the services with the understanding that its obligation for payment would be governed by the rates specified in the regulations, and the purchase orders were silent as to late charges, it is our view that the Navy also agreed to be bound by the late charge regulation. See B-173725, September 16, 1971.

In view of our conclusion that payment of the interest charges under the purchase orders as originally issued was authorized, the modification of the purchase order was proper.

Therefore, the voucher representing the late payment charge of \$431.19 may be certified for payment.



Acting Comptroller General
of the United States